Filed 8/21/12 Langdell v. Steinberg CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

DR. TIM LANGDELL, Defendant and Appellant, v. SETH STEINBERG, Plaintiff and Respondent.	A132292 (Marin County Super. Ct. No. CIV 1003558)

Defendant in propria persona, Dr. Tim Langdell, appeals from a judgment denying his petition to vacate an arbitration award in favor of attorney Seth Steinberg in an attorney-client fee dispute. Langdell alleged that the arbitrators abused their discretion by refusing to postpone the hearing. The trial court disagreed and granted Steinberg's petition to confirm the award.

Langdell contends that the award must be vacated because the chair of the arbitration panel was subject to disqualification and refused to disqualify himself on Langdell's demand; the arbitration panel unfairly refused to postpone the arbitration hearing; and the arbitration panel refused to consider key evidence. Langdell also contends that the court should have granted his motion to reconsider the judgment and should have granted him a new trial. These arguments lack merit and we affirm the judgment.

I. BACKGROUND

Langdell disputed Steinberg's fee for legal services and elected to resolve the dispute through non-binding arbitration before the Marin County Bar Association (MCBA). A three-member panel was appointed on December 1, 2009, and the panel scheduled the arbitration hearing for February 25. In January 2010, shortly after the hearing was scheduled, Steinberg notified the panel that he would be out of town on the date of the hearing. Langdell was not available for any date in February, so both parties and the panel agreed to move the hearing to March 5.

At approximately 4:30 p.m. on March 4, Langdell e-mailed the panel to advise that a "family medical emergency" prevented him from attending the hearing the next day. The panel chair e-mailed all parties to order them to provide their availability for a telephone conference by March 8, and he directed Langdell to provide evidence of the medical emergency. The panel chair warned the parties that a hearing date would be set as a result of the conference. Langdell did not respond to the panel chair's request for more information regarding the emergency, and he did not participate in the scheduling call on March 10. The panel and Steinberg set the arbitration hearing for March 18. An order was served by e-mail and regular mail on March 11 notifying the parties of the March 18 hearing.

On March 11, Langdell e-mailed the panel to oppose the date. He said he did not receive any e-mail communication until March 11 and that he had previously informed the panel he would be out of town with little e-mail access on March 8–10 and March 17–19. While neither the arbitration panel nor Steinberg recall such a conversation or notice, Langdell asserts that he informed them on January 22 and provided a confirmation e-mail as evidence of his notification.

The panel chair refused to continue the hearing, and it proceeded with Langdell absent on March 18. In their decision to award Steinberg $30,949.02, the arbitrators fully considered documents Langdell initially filed in the proceeding as well as the testimony

and evidence Steinberg provided at the hearing. In accordance with MCBA Rule 31.3, the award was not made against Langdell solely because of his absence. Steinberg was found to have met all burdens of proof required of him. The award notes that Langdell willfully failed to appear at the hearing. It was served on the parties on April 23, 2010.

On July 9, 2010, Steinberg filed a petition to confirm the award, and the court set the petition for hearing on September 29. On September 24, Langdell filed his petition to vacate the award. His petition to vacate claimed that he had only recently received a copy of the award, although a letter he wrote to the MCBA on May 21, 2010, shows that he had received the award in the mail, forwarded from his previous address. The trial court postponed the September 29 hearing to November 1 in order to consolidate the motions to confirm and vacate the award. The November 1 date was extended to November 8 because Langdell's response was untimely. At the November 8 hearing, Steinberg objected to Langdell's declaration as untimely, and it was stricken from the record. The court subsequently confirmed the arbitration award to Steinberg and denied Langdell's motion to vacate.

Langdell filed a motion for reconsideration of the judgment on January 26, 2011, which the court denied on March 9, 2011, holding that Langdell's argument that the court's "order was wrong" was "not a valid basis for seeking reconsideration" as it presented "no new or different facts, circumstances or law." On March 30, 2011, the court awarded Steinberg an additional $17,067.77 in legal fees. The court entered judgment on the award on April 4, 2011, awarding Steinberg $51,060.82 plus interest.

Langdell appeals the trial court's denial of his motion to vacate, arguing that the judgment must be vacated because the arbitrators were biased against him. He argues that the panel unreasonably refused to postpone the hearing and to consider his evidence, in violation of Code of Civil Procedure section 1286.2, subdivision (a)(5). He also claims that the panel chair was biased because he was employed at the same firm as an attorney who was once disqualified from serving as an arbitrator in an attorney-client fee

dispute. Without citation to the record, Langdell claims that the unnamed firm is "notorious" for "falsely pretending" to be neutral arbitrators. Langdell argues that the panel chair's failure to disclose this fact violates Code of Civil Procedure section 1286.2, subdivision (a)(6). Langdell also mentions that the arbitration panel's actions "probably" violate Code of Civil Procedure sections 1286, subdivision (a)(3) and (4), but offers no further argument or citations to the record; we will not address these points. Finally, Langdell asserts that he is entitled to a new trial, as it is his right in a non-binding fee arbitration to object to the award and receive a trial de novo.

II. DISCUSSION

An arbitration award is not generally subject to judicial review. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 11; *SWAB Financial, L.L.C. v. E*Trade Securities, L.L.C.* (2007) 150 Cal.App.4th 1181, 1195–1196 (*SWAB*).) However, the trial court must vacate an award if a statutory ground for doing so exists. (*Benjamin, Weill & Mazer v. Kors*, (2011) 195 Cal.App.4th 40, 73 (*Weil*).) When an award is challenged based on the arbitrator's alleged partiality, our review is de novo. (*Haworth v. Superior Court*, 50 Cal.4th 372, 383 (2010).)

A strong legislative policy preference for expediency in resolving disputes underlies the deference given to the judgment of arbitration panels. "The arbitrator's decision should be the end, not the beginning, of the dispute." (*Moncharsh v. Heily & Blase*, *supra*, 3 Cal.4th 1, 10.) Therefore, judicial intervention in arbitration should be "minimized." (*Ibid*.) The party claiming bias has the burden of establishing facts in a claim against an arbitrator. (*Rebmann v. Rhode* (2011) 196 Cal.App.4th 1283, 1290.)

The parties dispute whether Langdell timely moved to vacate the award, but we will affirm the award on other grounds and thus will not discuss the timeliness of Langdell's petition.

1. The arbitration panel chair was not subject to disqualification

An award must be vacated if an arbitrator was subject to disqualification but failed to disqualify himself or herself after a timely demand to do so. (Code Civ. Proc., § 1286.2, subd. (a)(6).) An arbitrator is subject to disqualification if he or she does not disclose facts that might create an impression of bias in the eyes of a reasonable person. (See *Ceriale v. AMCO Ins. Co.* (1996) 48 Cal.App.4th 500, 504–505.) In the context of an attorney-client fee arbitration, an arbitrator is required to disclose contemporaneous private representation of lawyers and law firms in attorney-client fee disputes. (*Weill, supra,* 195 Cal.App.4th 40, 66.)

Langdell argues that *Weill* should be extended to include this case. In *Weill*, an arbitrator in an attorney-client fee dispute appeared to be biased because he failed to disclose the fact that he was simultaneously representing a prominent law firm in an attorney-client fee arbitration dispute that was being appealed to the California Supreme Court. The reasonable appearance of bias disqualified him from serving as an arbitrator, so the award was vacated. Without citation to the record, Langdell contends that the arbitration panel chair in this case was biased solely because he and the disqualified attorney in *Weill* were employed at the same unnamed firm, one which "specializes in defending attorneys in attorney-client fee disputes." Langdell did not meet his burden to provide evidence of bias because he failed to support his assertion with appropriate citation to the record. (See Cal. Rules of Court, rule 8.204(a)(1)(C).) The fact that Langdell is a party in propria persona does not exempt him from this requirement. (*Stokes v. Henson* (1990) 217 Cal.App.3rd 187, 198.)

Even if Langdell had successfully established the facts alleged, it is unreasonable to infer that an arbitrator is biased simply because he works at the same firm as an attorney who would be disqualified from serving as an arbitrator in the present case. We agree with Steinberg's argument that *Weill* "is specific to a finding related to the arbitrator being actively involved as a lawyer in cases similar to the one in which he or

she may be serving as an arbitrator." *Weill* emphasized the attorney's direct and contemporaneous involvement in defending law firms in attorney-client fee disputes. Here, Langdell does not allege that the panel chair had ever privately represented law firms in attorney-fee disputes, let alone conducted the representation simultaneously with his arbitration in the present matter. Because there was no good cause for recusal, the panel chair was not obligated to disqualify himself at Langdell's request.

2. Langdell did not demonstrate good cause for postponing the hearing date

An award must be vacated if the arbitrators refuse to postpone the hearing when sufficient cause is shown. (Code Civ. Proc., § 1286.2, subd. (a)(5).) When an arbitrator refuses to postpone a hearing, the court must determine (1) whether the arbitrator abused his or her discretion and (2) whether the moving party suffered substantial prejudice as a result. (*SWAB, supra,* 150 Cal.App.4th at p. 1198.) The MCBA requires any hearing in front of a three-member panel to commence within 90 days of service of the panel assignment; good cause is required to continue the hearing beyond the 90-day period. The panel was appointed on December 1, 2009; thus, after March 5 a continuance required a showing of good cause.

Here, Langdell did not demonstrate good cause to postpone the arbitration hearing any further. Langdell requested a continuance the day before the hearing on March 5 due to a "family emergency," but did not respond to the panel chair's immediate request for more information. Nonetheless, the panel chair informed both parties that the hearing would be postponed and that they had until March 8 to submit dates of availability. Langdell was silent from March 4 until March 11. He did not provide more information regarding the "emergency" and did not respond to the chair's request for more convenient dates. Although Langdell claims that he had previously told the panel he would be unavailable March 8 through March 10, nothing prevented him from responding to the panel chair's inquiries immediately following the "emergency" on March 4. Accordingly, there was no good cause to postpone the hearing.

Contrary to Langdell's assertion, the panel's accommodation of Steinberg's request for continuance does not demonstrate bias. Steinberg requested a continuance more than a month before his scheduling conflict with the February 25 date.

3. The arbitration panel did not refuse to consider material evidence

An arbitration award must be vacated if the rights of a party were substantially prejudiced by the arbitrators' refusal to hear evidence material to the controversy. (Code Civ. Proc., § 1286.2, subd. (a)(5).) An arbitrator has no obligation to hear evidence in a live presentation; rather, an arbitrator " 'hears' " evidence by providing an opportunity for both sides to present their side of the case. (*Schlessinger v. Rosenfeld, Meyer & Susman* (1995) 40 Cal.App.4th 1096, 1105.) The manner in which evidence is weighed by the arbitration panel is not reviewable. (*Maaso v. Signer* (2012) 203 Cal.App.4th 362, 374–375.)

There is no reason to believe the arbitration panel failed to consider Langdell's evidence. Langdell was given ample opportunity to submit evidence, but he did not submit anything except for the documents used to initiate the arbitration. The arbitration panel fully considered the arguments presented in Langdell's initiating document in the hearing that Langdell did not attend. The decision states: "No issue in this Award has been determined by default. . . . [Langdell and Edge Games] submitted no documentary evidence at any time (other than a copy of the engagement letter attached to the filing by which they initiated this proceeding), were offered the opportunity to request to present testimony by declaration under Rule 27 and declined to do so, and submitted argument only in their initiating filing. The arguments Clients presented in their initiating documents were fully considered in making this Award." Langdell cannot object that documents were not "considered" simply because he disagrees with the arbitration panel's conclusion. At oral argument in this court, Langdell claimed to have submitted evidence to the arbitration panel that was ignored. We have reviewed the record of

Langdell's motions before the trial court and are unable to identify any of the evidence Langdell claims to have submitted to the arbitration panel.

4. The court properly denied Langdell's motion to reconsider

The trial court properly denied Langdell's motion to reconsider because the facts alleged were previously available to him. "Facts of which a party seeking reconsideration was aware at the time of the original ruling are not 'new or different facts' as would support a trial court's grant of reconsideration." (*People v. Safety National Casualty Corp.* (2010) 186 Cal.App.4th 959, 974.) Langdell's "new" evidence consisted of e-mails he sent in January and March 2010, which were easily available to him. Furthermore, Langdell's argument that his previously submitted evidence should be considered "new" because the trial court "forgot" to consider it is without merit. The mere fact that the court ruled in Steinberg's favor does not merit reconsideration of the ruling.

5. Langdell is not entitled to a new trial

In a non-binding arbitration of an attorney-client fee dispute, either party is entitled to a new trial if sought within 30 days, unless the party willfully fails to appear at the arbitration hearing. (Bus. & Prof. Code, § 6204, subd. (a).) Because Langdell willfully failed to appear at the arbitration hearing, the option of a new trial is foreclosed to him by Business & Professions Code section 6204, subdivision (a). Given that an arbitration award is not subject to judicial review for errors of law or fact (*Moncharsh v. Heily & Blase*, *supra*, 3 Cal.4th 1, 11), and given that the award was confirmed by the court, we defer to the Superior Court's implicit determination that Langdell's failure to appear was willful. (See Bus. & Prof. Code, § 6204, subd. (a).) Accordingly, Langdell is not entitled to a new trial.

III. CONCLUSION

The judgment is affirmed.

_____
Siggins, J.

We concur:

_____
Pollak, Acting P.J.

_____
Jenkins, J.